3-1011-16696-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Midwest Oil of Minnesota, LLC.	**FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on October 17, 2005, at the Office of Administrative Hearings. The OAH record closed October 25, 2005, upon receipt of the transcript.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Commerce (Department).

Naomi Isaacson, Chief Executive Officer, appeared for Midwest Oil of Minnesota, LLC, P.O. Box 10568, Green Bay, WI 54307 (Midwest Oil or the Respondent).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Kevin Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, for information about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Did Midwest Oil violate Minn. Stat. §§ 325D.01-04 & 325D.71 by selling gasoline below cost at its retail stations in Anoka, Albert Lea, and Oakdale?

2. Did Midwest Oil violate Minn. Stat. § 45.027, subd. 1(a)(2) by failing to provide complete responses to the Department's request for information dated March 17, 2005, and the Department's administrative subpoena dated April 8, 2005?

The Administrative Law Judge concludes that Midwest Oil did sell gasoline below cost at all three retail stations and that it did violate Minn. Stat. § 45.027 by failing to provide complete responses to the Department's request for information and administrative subpoena.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Midwest Oil of Minnesota, LLC, is a Wisconsin limited liability corporation formed in December 2003. Midwest Oil is authorized to do business in Minnesota as a foreign LLC.

2. In approximately January 2005, Midwest Oil began operating a retail gasoline station in Anoka (Anoka Exxon). By early February, the Department began receiving a steady stream of complaints that Anoka Exxon was selling gasoline below cost.[1]

3. On February 15, 2005, the Weights and Measures Division of the Department of Commerce sent a warning letter to Anoka Exxon regarding the complaints stating that if complaints continued, the Department would begin an investigation that might result in enforcement action.[2]

4. On February 24, 2005, the Weights and Measures Division notified Anoka Exxon/Midwest Oil of a pending investigation and requested that information regarding retail prices by grade of gasoline and bills of lading for delivery of gasoline be provided for the period from February 10, 2005, through February 24, 2005[3].

5. Midwest Oil did not respond to these requests for information.

6. In February 2005 Midwest Oil began operating a retail gasoline station in Albert Lea, Minnesota (Budget Mart Mobil). By March, the Department began receiving complaints that Budget Mart Mobil was selling gasoline below cost.[4]

7. On March 15, 2005, a field investigator with the Weights and Measures Division went to the station in Albert Lea and asked the person working the cash register for information about pricing. The cashier called Naomi Isaacson, the CEO of Midwest Oil, who spoke to the investigator on the telephone and agreed to meet with the Department later that day at the Department offices in Roseville.[5]

8. Naomi Isaacson attended the March 15, 2005, meeting with Rebekah Brown, an attorney from Westview Law Center in Hastings, Minnesota. During the meeting, Isaacson and Brown expressed ignorance of Minn. Stat. § 325D.71. They were aware of the correspondence sent to Anoka Exxon. They said their pricing reflected a $0.06 rebate from Mobil. They also said they were matching the discounted price of a competitor across the street. The investigator went over the statutes with them and explained that Midwest Oil could not post a discounted price but could use coupons or other marketing techniques to discount a legal posted price. The Department also provided information about the Axxis Reporting Services website, operated by the Petroleum Marketers Association, on which local terminals post daily information about minimum pricing. Isaacson and Brown indicated Anoka Exxon would change its prices to comply with the statute.[6]

9. On or about March 16, 2005, an investigator for the Department of Commerce telephoned Naomi Isaacson and informed her that he would be sending her another written request for documents. In this conversation, Isaacson stated that she thought Midwest Oil could price gasoline the way they did it in Wisconsin. Isaacson and the investigator agreed in this conversation that Midwest Oil's response to the Department's request for documents would be due April 6, 2005.[7]

10. On March 17, 2005, the Department wrote to Midwest Oil seeking the following information for Anoka Exxon for February and March 2005: daily listing of gallons sold, sorted by grade; a complete accounting of retail prices charged for each grade; and bills of lading for all deliveries. The letter required a response by April 6, 2005, and also notified Midwest Oil that it was obligated to comply with and respond to the written request pursuant to Minn. Stat. § 45.027, subds. 1a & 2 (2004).[8]

11. On April 7, 2005, Rebekah Brown contacted the Department investigator and requested a 90-day extension of time to respond to the information requests. The Department declined to grant the extension. [9]

12. On April 8, 2005, the Commissioner issued an Administrative Subpoena to Midwest Oil, seeking similar information for all of Midwest Oil's Minnesota-related businesses for the period from February 1 through April 8, 2005. The subpoena also requested information about Midwest Oil's employees and their responsibilities for pricing and pricing displays. The subpoena provided a deadline for responding of April 22, 2005.[10]

13. On April 22, 2005, Midwest Oil provided a partial response to the subpoena with regard to Anoka Exxon, but objected to providing information about other gasoline stations. Midwest Oil provided daily sales data for the period from January 25, 2005, through March 31, 2005.[11] The response identified Naomi Isaacson as the person responsible for price surveys and all decisions concerning prices and pricing displays.[12] In a cover letter, Rebekah Brown stated that because the store was newly opened and the bookkeeping system was being put in place in the first few months, immediate response to the Department's requests was not possible. She further stated that there were some days for which the company could not locate daily reports, which must have been misplaced.[13]

14. In May 2005, Midwest Oil began operating a retail gasoline station in Oakdale, Minnesota (Oakdale Exxon). Again, the Department began to receive complaints almost immediately that Oakdale Exxon was selling gasoline below cost.[14]

15. On May 6, 2005, after reviewing the information provided by Midwest Oil regarding Anoka Exxon, the Department investigator contacted Rebekah Brown and attempted to set up a meeting with Midwest Oil to discuss his findings. Eventually the investigator had a telephone conference call with Brown on or about June 7, 2005, with additional conversations on June 8 and 10, 2005. They discussed current pricing in Anoka, Albert Lea, and Oakdale. The investigator explained again how the statute operates and how to use the Axxis website to determine pricing information. He offered to make himself available by telephone to assist in setting correct prices. He also asked that Midwest Oil immediately raise its prices to legal minimums. Brown summarized this meeting in a memorandum and forwarded it to Isaacson on June 10, 2005.[15]

16. Brown indicated during these conversations that Midwest Oil did not intend to operate a typical business plan and profit from every gallon of gasoline sold, but that its intent was to raise funds to build a school in India. She did not suggest that Midwest Oil was running any type of promotion or using a different national reporting service to obtain information about minimum legal prices.[16]

17. Based on data provided in the complaints and on data provided by Midwest Oil in response to the administrative subpoenas and during discovery,[17] the Department determined that Midwest Oil sold gasoline below cost at Anoka Exxon on 151 days between February 10, 2005, and August 30, 2005; at Budget Mart in Albert Lea on 84 days between March 4, 2005 and August 30, 2005; and at Oakdale Exxon on 69 days between May 20, 2005, and August 29, 2005.[18] The Department also determined that during these timeframes, competitors identified by Midwest Oil were not offering promotional prices.[19]

18. Midwest Oil's price documentation based on credit card transactions is substantially consistent with prices reported by complainants, with some exceptions. If Midwest Oil's price documentation were used as the exclusive source of prices[20] (instead of relying on some complaint data, as the Department did) Midwest Oil's own records reflect that it sold gasoline below cost at Anoka Exxon on 145 days; at Budget Mart in Albert Lea on 81 days; and at Oakdale Exxon on 67 days during the above timeframes.[21]

19. In Anoka, Midwest Oil's prices averaged $0.07 below the minimum price, ranging from $0.01 to about $0.10 below minimum from February through the end of May. Beginning in June, however, Anoka Exxon's prices ranged from about $0.11 to $0.18 below the minimum. In July and August the prices went back to the $0.02 to $0.12 range below the minimum.[22]

20. In Albert Lea, Midwest Oil's prices averaged $0.06 below the minimum price, ranging from $0.01 to $0.17 below the minimum price.[23]

21. In Oakdale, Midwest Oil's prices averaged $0.12 below the minimum price, ranging from $0.03 to $0.17 below the minimum price in May; but between June 1 and

June 28, 2005, prices were substantially lower, ranging from $0.09 to $0.25 below the minimum. In July and August Midwest Oil's prices ranged from $0.01 to $0.11 below the minimum.[24]

22. Midwest Oil's below-cost gasoline sales have damaged competitors in Anoka and Oakdale, causing the loss of as much as one third of their monthly sales.[25] In addition, because Midwest Oil's prices were so much lower than other retailers could legally charge, some customers concluded incorrectly that the other retailers had been over-charging for gasoline.[26]

23. Midwest Oil continues to operate all three retail stations, although it has not sold gasoline in Oakdale since the end of August. It was selling gasoline in Anoka as of the date of the hearing.[27]

Procedural Findings

24. On June 27, 2005, the Department served Midwest Oil by mail with a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges. The Notice of and Order for Hearing alleged violations from February 10, 2005, through March 29, 2005, for Anoka Exxon; from March 4, 2005, through June 9, 2005, for Budget Mart Mobil in Albert Lea; and from May 20, 2005, through June 10, 2005, for Oakdale Exxon. The prehearing conference was scheduled for August 5, 2005. The Department also served a copy of the Notice of and Order for Hearing on Midwest Oil's attorney, Rebekah Brown.

25. On June 27, 2005, the Commissioner issued a Cease and Desist Order and Notice of Right to Hearing ordering Midwest Oil to cease and desist from selling gasoline, offering, or advertising gasoline below cost.[28]

26. At the prehearing conference on August 5, 2005, Christopher K. Sandberg of Lockridge Grindal Nauen PLLP, Suite 2200, 100 Washington Avenue South, Minneapolis , MN 55101, appeared for Midwest Oil and filed a Notice of Appearance. At the conference, the Department advocated setting a hearing date as soon as possible because it contended that Midwest Oil's illegal sales of gasoline were causing substantial harm to other businesses that could not legally or economically compete against Midwest Oil's prices. Mr. Sandberg argued that he needed time to review the file as he had just been hired that morning to replace Rebekah Brown and that additional time was required to obtain the information necessary to respond to the Department's discovery requests.

27. Based on the arguments of counsel, the First Prehearing Order set a deadline of August 22, 2005, for Midwest Oil to respond to the Department's pending discovery requests; the discovery deadline was set at September 12, 2005; dispositive motion deadlines were scheduled; and the hearing date was set for October 10-11, 2005. An additional telephone status conference date was set for a few days after the discovery deadline to ensure discovery issues had been resolved and the case was on track to meet the hearing date. The Administrative Law Judge stated during the prehearing conference that the parties should take these deadlines seriously because

the hearing would not likely be continued given the Department's concerns about competitive harm.[29]

28. Midwest Oil did not provide any discovery responses to the Department by August 22, 2005.

29. On August 29, 2005, Midwest Oil filed a declaratory judgment action in Ramsey County District Court asserting that Minn. Stat. § 325D.71 was facially unconstitutional because it violated the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution and Article I of the Minnesota Constitution. In the Complaint Midwest Oil asserted that it had acquired its retail locations from operators who had failed in the past, and in order to re-establish these locations developed a business plan that included aggressively pricing its retail gasoline in order to attract customers. Midwest Oil sought the Department's agreement to a voluntary indefinite suspension of the administrative process pending the outcome of the declaratory judgment action.[30]

30. On August 29, 2005, the Administrative Law Judge held a telephone conference with the parties to discuss Midwest Oil's failure to provide discovery responses and the filing of the declaratory judgment action. The Department declined to agree to a voluntary suspension of the administrative process. Midwest Oil then made an oral motion to suspend the administrative proceeding, and the Department responded with an oral motion for evidentiary sanctions to preclude Midwest Oil from supporting defenses or opposing claims addressed by the Department's discovery requests. The parties filed briefs in support of their motions. Argument was heard on September 13, 2005, at the Office of Administrative Hearings.

31. On September 14, 2005, the Administrative Law Judge issued an order denying the motion for an indefinite stay of the administrative proceeding, denying the motion for sanctions, and requiring Midwest Oil to respond to the Department's interrogatories and requests for production of documents by September 16, 2005.[31]

32. On September 15, 2005, the Department served and filed a Notice of and Order for Hearing and Amended Statement of Charges alleging additional days of violation for each retail station through August 30, 2005.

33. On September 23, 2005, the Department again moved for evidentiary sanctions against Midwest Oil based on the manner in which Midwest Oil produced its documents. The documents were copied in a confusing manner and were produced out of order, making it difficult to determine which data corresponded to a particular date. Midwest Oil responded September 28, 2005, and argument was heard that afternoon at the Office of Administrative Hearings.

34. On September 29, 2005, the Administrative Law Judge denied the motion for evidentiary sanctions but required Midwest Oil to re-organize the cash register reports for Oakdale Exxon and Albert Lea Mobil so that the reports were consecutively paged. The hearing date was continued to October 17-18, 2005, to allow sufficient time to re-organize the material and to attempt to stipulate to exhibits that summarized these reports.[32]

35. At some point in this timeframe, Midwest Oil moved for a temporary restraining order (TRO) in Ramsey County District Court to suspend the administrative proceedings pending the outcome of the declaratory judgment action in district court. The hearing on the motion for the TRO was held October 11, 2005. The motion was denied on or about October 12, 2005.

36. On October 13 and 14, 2005, Midwest Oil filed motions in limine concerning exhibits and witnesses identified on the Department's exhibit and witness lists.

37. On the afternoon of October 14, 2005, counsel for Midwest Oil filed a Notice of Withdrawal for Lockridge Grindal Nauen PLLP. The Notice of Withdrawal identified Joshua Jay Kanassatega, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, as new counsel for Midwest Oil. Counsel for the Department left messages with the Administrative Law Judge stating that Midwest Oil had fired Mr. Sandberg that afternoon, and the Department requested an immediate telephone conference with new counsel for the purpose of discussing whether a continuance of the hearing would be granted to allow new counsel time to prepare for the hearing. The Administrative Law Judge notified all counsel involved that they should appear at the commencement of the hearing to discuss these matters in person; that while the ALJ was open to hearing argument on a motion for a continuance, it was unlikely a continuance would be granted because of previous extensions of the schedule; and that Midwest Oil should be prepared to proceed with the hearing on October 17, 2005.[33]

38. On October 17, 2005, Naomi Isaacson, the CEO of Midwest Oil, appeared for the company without outside counsel. Isaacson is an attorney licensed to practice law in Minnesota. Isaacson stated that Midwest Oil had terminated its relationship with Lockridge Grindal Nauen on October 14, 2005; that Midwest Oil had attempted to retain new counsel, but had not yet been able to do so; and that Midwest Oil needed more time to locate new counsel and permit new counsel to prepare for the hearing. She was unsure how much time would be required. Isaacson declined to tell the Administrative Law Judge why Midwest Oil had fired its attorney, except for saying vaguely that Midwest Oil's board disagreed with some decisions that had been made and things that should have been pursued were not. Attorneys from Leonard, Street and Deinard stated that the firm was not representing Midwest Oil and that it was no longer considering representing Midwest Oil.[34]

39. The Administrative Law Judge denied Midwest Oil's request for a continuance of the hearing based on the conclusion that Midwest Oil had failed to demonstrate good cause for a continuance.[35] The record reflects that Midwest Oil has persistently sought to delay any response to the merits of the complaints made about its pricing. It failed to respond to the Department's efforts to obtain information until an administrative subpoena was issued, and then it provided only a partial response. Midwest Oil replaced its counsel once before, when it hired Mr. Sandberg, and it sought and obtained additional time then so that he could prepare for the hearing. It produced its documents almost one month after the time required by the First Prehearing Order, and when it did so, the documents were copied in a confusing manner and produced out of order; the hearing was continued for one week as a result, so that counsel could

re-organize those documents and attempt to stipulate to exhibits that summarized them.[36] Midwest Oil also persistently sought to delay the hearing through unsuccessful motions for a stay and for a TRO; and Midwest Oil appeared for the hearing without counsel, with no prospect of hiring new counsel, and with no specific timeframe for hiring new counsel. Based on this record the Administrative Law Judge concluded that the last-minute firing of its lawyer was another reflection of Midwest Oil's strategy of delay.

40. After the motion for a continuance was denied, Naomi Isaacson left the hearing room during a break and did not return.[37] Midwest Oil did not participate further in the evidentiary hearing, which concluded early that afternoon.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.027, subd. 7, 325D.71, and 14.50.

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Department to show by a preponderance of the evidence that the Respondent has violated Minn. Stat. § 325D.71.[38]

5. Minn. Stat. § 325D.71 provides in relevant part as follows:

> Any offer for sale of gasoline by a retailer by way of posted price or indicating meter that is below cost, as defined by section 325D.01, subd. 5(3), is a violation of section 325D.04, except that the criminal penalties in section 325D.071 do not apply. In addition to the penalties for violations and the remedies provided for injured parties set forth elsewhere in this chapter, the commissioner of commerce may use the authority under section 45.027 for the purpose of preventing violations of this section. A retailer who sells gasoline at the same or higher legally posted price of a competitor in the same market area, on the same day does not violate this section.
>
> A retailer who offers gasoline for sale at a price below cost as part of a promotion at an individual location for no more than three days in any calendar quarter is not in violation of this section.

6. "Cost" is defined as the average terminal price on the day, at the terminal from which the most recent supply of gasoline delivered to the retail location was

acquired, plus all applicable state and federal excise taxes and fees, plus the lesser of six percent or eight cents.[39]

7. The "average terminal price" is the arithmetic mean of all prices for an individual grade of gasoline at a terminal price as published by a nationally recognized petroleum price reporting service.[40]

8. Based on Midwest Oil's own documentation, Midwest Oil offered gasoline for sale below cost at Anoka Exxon on 145 days; at Budget Mart in Albert Lea on 81 days; and at Oakdale Exxon on 67 days during the timeframes alleged by the Department. There is no credible evidence that Midwest Oil was meeting the legally posted price of a competitor in the same market area, or that it was meeting a competitor's promotional price, on any of these days.

9. Any person subject to the jurisdiction of the Commissioner shall comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department.[41] In addition, for the purpose of any investigation or inquiry related to the duties and responsibilities entrusted to the Commissioner, the Commissioner may require the production of documents or records that the commissioner considers relevant or material to the inquiry.[42]

10. Midwest Oil failed to respond to the Department's request for information in March 2005, and it failed to fully respond to the Commissioner's administrative subpoena in April 2005.

11. The Commissioner may impose a civil penalty not to exceed $10,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the Commissioner unless a different penalty is specified.[43]

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against Midwest Oil of Minnesota, LLC.

Dated this 26th day of October, 2005.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

[1] *See generally* Ex. 7. Complaints about Anoka Exxon were filed by Holiday Stationstores in Ramsey, Sunfish Express, Bill's Superette, Wash N Fill Express of Blaine, Charlie Brown's of Elk River, J.C. Griswold, Sid Haugtvedt, Sid's 66, Local Oil Distributing, Inc./SuperAmerica, Casey's General Stores, Beaudry Oil Co., Bobby and Steve's Auto World, Highway 10 Mobil, Food N'Gas, Gas & More, RPL, Ramsey Market, and Go Gas n' Wash. Most of these gasoline retailers filed multiple complaints about Anoka Exxon.

[2] Ex. 2 at 322. The Department has taken enforcement action against other retailers, who have consented to fines and cease and desist orders. *See* Ex. 9.

[3] *Id*. at 323.

[4] *See generally* Ex. 6. Multiple complaints about Budget Mart Mobil were filed by HyVee Gas, KwikTrip, Nielsen's Conoco, South MN Oil Co., Freeborn County Cooperative Oil Co., Murphy USA, the Albert Lea City Attorney, Kraus Foods, and Shell Food Mart. Toward the end of August 2005, Midwest Oil began filing complaints about gasoline prices charged by HyVee Gas.

[5] Ex. 4 at 524.

[6] *Id*.; Tr. at 19-21.

[7] Tr. at 34-35; Ex. 2 at 339.

[8] Ex. 2 at 326-27.

[9] Ex. 2 at 339.

[10] Ex. 2 at 332-34

[11] Ex. 2 at 349-54.

[12] Ex. 2 at 356.

[13] Ex. 2 at 335.

[14] *See generally* Ex. 5. Multiple complaints were filed by Holiday stores in Maplewood and Oakdale, Mills Fleet Farm, Yocum Oil, Linn Retail Center, Kellie's Corner, Charlie Brown's, Sunfish Express, and Classic Touch, Inc.

[15] Ex. 2 at 336-38.

[16] Tr. at 42-44.

[17] Exs.10 & 11.

[18] Ex. 1. Although Ex. 1 reflects 90 days of violation in Albert Lea, the Department agreed at the hearing that no violations occurred in Albert Lea on May 18-20 and May 28-30, 2005. *See* Tr. at 60.

[19] Tr. 46-49.

[20] Ex. 11.

[21] Exs. 1 & 11. In Anoka, according to Midwest Oil's data, it was not in violation on February 18, April 6, April 15-16, and August 29-30. Midwest Oil's price documentation based on credit card sales reflects prices higher than those alleged by the Department, but still below-minimum pricing, on April 2, April 5, May 11-14, June 8-16, July 7, July 14-19, August 8, and August 16. Midwest Oil's price documentation reflects that it charged prices lower than those alleged by the Department on July 12-13 and August 2, 2005.

In Albert Lea, according to Midwest Oil's data, it was not in violation on June 9, August 18, and August 30, 2005. Its prices are higher than alleged by the Department, but still below minimum, on March 10-11, May 27, June 20, July 7, August 2, August 25, and August 27, 2005. Midwest Oil's records reflect that it charged prices lower than those alleged by the Department on May 31, 2005.

In Oakdale, according to Midwest Oil's data, it was not in violation on August 2 or August 8. Its prices are higher than those alleged by the Department, but still below minimum prices, on May 21, May 26, June 9, June 17, July 7, August 1, and August 5, 2005. Midwest Oil's records reflect that it charged prices lower than those alleged by the Department on May 27 and August 3, 2005.

[22] Ex. 1.

[23] Ex. 1.

[24] Ex. 1.

[25] Tr. at 74, 82, 88.

[26] Tr. at 83.
[27] Tr. at 77-78, 85, 89-90.
[28] Affidavit of Christopher Kaisershot, September 6, 2005, Ex. B.
[29] First Prehearing Order, August 10, 2005.
[30] Summons and Complaint dated August 29, 2005, forwarded to the Administrative Law Judge August 26, 2005, in anticipation of the filing date.
[31] Order on Motion to Stay Proceedings; Order on Discovery Issues, September 14, 2005.
[32] Order on Motion for Evidentiary Sanctions, September 29, 2005.
[33] Letter dated October 14, 2005, from the Administrative Law Judge faxed to Jay Kanassatega and Bryant Tchida at Leonard, Street and Deinard; Christopher Sandberg at Lockridge Grindal Nauen; and Christopher Kaisershot.
[34] Tr. at 4-13.
[35] *See* Minn. R. 1400.7500 (good cause for a continuance does not include intentional delay); Minn. R. 1400.5700 (withdrawal of counsel does not create any right to a continuance).
[36] During argument on the motion for evidentiary sanctions, counsel for Midwest Oil stated that the original documents were sent to Midwest Oil's headquarters in Green Bay to be copied, and the copies were forwarded to him for production in September 2005.
[37] Tr. at 13.
[38] Minn. R. 1400.7300, subp. 5.
[39] Minn. Stat. § 325D.01, subd. 5(3).
[40] Minn. Stat. § 325D.01, subd. 12.
[41] Minn. Stat. § 45.027, subd. 1a.
[42] Minn. Stat. § 45.027, subd. 2.
[43] Minn. Stat. § 45.027, subd. 6.